

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NORMAN GREGORY,

Plaintiff, No. CIV S-04-2523 DFL EFB P

VS.

T. AYERS, et al.,

Defendants. ORDER

Plaintiff is a prisoner without counsel seeking relief for civil rights violations. *See* 42 U.S.C. § 1983. On August 14, 2006, plaintiff filed a motion to compel. Defendants filed their opposition to this motion on August 30, 2006, and plaintiff replied on September 11, 2006.

In his motion, plaintiff states that he prepared his discovery requests “on or about 6-14-06” but was unable to go to the law library to make copies until June 22, 2006, due to an institutional lockdown on June 9, 2006. Plaintiff mailed his requests on June 22, 2006. In response, plaintiff received a letter from defense counsel, which he submits together with his motion, stating:

Defendants object to these discovery requests as untimely. They were not served at least 60 days prior to the August 18, 2006 discovery cut-off date, as required by the Court's May 31, 2006 scheduling order. As such, Defendants are not obligated to provide responses to your discovery requests.

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1 Defendants oppose plaintiff's motion on the basis that his requests for discovery were  
2 untimely. Additionally, defendants claim that plaintiff's justification for making his requests  
3 three days late is "clearly false," as the log for checking in and out of the prison law library  
4 indicates that plaintiff was there on June 15, 2006. The representation by plaintiff in that regard  
5 is, indeed, troubling.

6 The court notes, however, that on June 15, 2006, plaintiff had four full days in which to  
7 mail these requests and still be within the required 60-day period prior to the August 18, 2006,  
8 discovery cut-off date. Defendants do not dispute that the prison was on lockdown as plaintiff  
9 claims, or that the lockdown interfered with plaintiff's ability to timely mail his discovery  
10 requests.

11 In reluctantly granting plaintiff's motion to compel, the court turns to the Federal Rules  
12 of Civil Procedure, Rules 8(f) and 6(b)(2). Rule 8(f) provides that all pleadings shall be so  
13 construed as to do substantial justice. Rule 6(b) provides that for cause shown the court may at  
14 any time in its discretion, "upon motion made after the expiration of the specified period permit  
15 the act to be done where the failure to act was the result of excusable neglect." Notwithstanding  
16 the questionable representation by plaintiff as to June 15, it still appears that his discovery  
17 requests were late by a matter of a few days and that the lockdown interfered with his ability to  
18 meet the deadline. Accordingly, plaintiff's motion to compel discovery is granted.

19 In accordance with the foregoing, IT IS HEREBY ORDERED that:

20 1. Plaintiff's August 14, 2006, motion to compel is granted.

21 2. Defendants shall respond to plaintiff's requests for discovery within twenty days from  
22 the date this order is served.

23 Dated: February 15, 2007.

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25 EDMUND F. BRENNAN  
26 UNITED STATES MAGISTRATE JUDGE